



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2013-0024; FRL 9900-21-OAR]

California State Nonroad Engine Pollution Control Standards; Amendments to Spark Ignition Marine Engine and Boat Regulations; Request for Authorization; Opportunity for Public Hearing and Comment

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Notice of Opportunity for Public Hearing and Comment

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to the California Spark Ignition Marine Engine and Boat Regulations (2008 Marine SI Amendments or 2008 Amendments). CARB requested EPA confirmation that some of the 2008 Amendments are within the scope of prior EPA authorizations or alternatively that EPA grant full authorization for those amendments. CARB also requested confirmation that additional amendments require and merit full authorization. This notice announces that EPA has tentatively scheduled a public hearing and is now accepting written comment on California's request for authorization of the 2008 Marine SI Amendments.

**DATES:** EPA has tentatively scheduled a public hearing concerning CARB's request on September 16, 2013, at 9 a.m. EPA will hold a hearing only if any party notifies EPA by September 6, 2013, of their request to present oral testimony. Parties wishing to present oral testimony at the public hearing must provide written notice by September 6, 2013 to Julian Davis at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street NW., Washington, DC 20005. If EPA does not receive a request for a public hearing, EPA will not hold a hearing, and instead will consider CARB's request based on

written submissions to the docket. Any party may submit written comments until October 18, 2013.

By September 10, 2013, any person who plans to attend the hearing may check the following Web page for an update, <http://www.epa.gov/otaq/cafr.htm>, or may call Julian Davis at (734) 214-4029 to learn if a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2013-0024, by one of the following methods:

- *On-Line* at <http://www.regulations.gov/>: Follow the On-Line instructions for submitting comments. Direct your comments to Docket ID No. EPA-HQ-OAR-2013-0024
- *Email*: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax*: (202) 566-1741
- *Mail*: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2013-0024, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery*: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not

submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov/> or email.

The <http://www.regulations.gov/> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov/>, your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA-HQ-OAR-2013-0024. Publicly available docket materials can be accessed either electronically through <http://www.regulations.gov/> or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for

the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov/>. After opening the <http://www.regulations.gov/> Web site, enter EPA-HQ-OAR-2013-0024 in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a Web page that contains general information about California waiver and authorization requests. The page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Julian M. Davis, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214-4029. Fax: (734) 214-4053. Email: [davis.julian@epa.gov](mailto:davis.julian@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. California's Marine Spark Ignition and Boat Regulations**

On March 28, 2007 EPA granted an authorization for California's initial set of Marine Spark Ignition and Boat regulations.<sup>1</sup> This authorization enabled CARB to enforce regulations applicable to outboard and personal watercraft engines and to enforce the first tier of regulations affecting inboard and stern drive engines. EPA authorized California's second tier of inboard and

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<sup>1</sup> 72 Fed.Reg.14546 (March 28, 2007).

sterndrive engine regulations in 2011.<sup>2</sup> California refers to these regulations collectively as the “CARB Marine Spark Ignition Engine (“Marine SI”) regulations.”

By letter dated November 30, 2012, CARB submitted to EPA an authorization request pursuant to section 209(e) of the Clean Air Act (“CAA” or “the Act”) for its 2008 Marine SI Amendments.<sup>3</sup> The amendments seek to address technical issues arising between 2006 and 2008; to make clarifications and correct cross referencing errors found in the original regulation; and to enhance alignment with other CARB and EPA regulations. CARB is requesting two types of authorization actions on the 2008 Amendments.

First, CARB requests confirmation that certain changes are within-the-scope of the prior authorizations, or in the alternative, merit full authorization. The provisions for which CARB requests a within-the-scope determination include: clarification of aftermarket exemption procedures; new environmental label options; new test cycle, emissions measurement, and assigned deterioration factor options for high performance engines; optional engine discontinuation allowances for sterndrive/inboard engines; compliance assistance changes; revised on-board diagnostic marine requirements; changes to replacement engine provisions; and modification of exhaust standards for high-performance sterndrive/inboard engines.<sup>4</sup>

Second, CARB requests full authorization to enforce other changes within the 2008 Amendments that revise standards or establish new requirements. The provisions for which CARB requests new authorization include: revised total hydrocarbon emission standards;

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<sup>2</sup> 76 FR 24872 (May 3, 2011).

<sup>3</sup> “CLEAN AIR ACT § 209(e) (2) AUTHORIZATION SUPPORT DOCUMENT SUBMITTED BY THE CALIFORNIA AIR RESOURCES BOARD, November 30, 2012,” at p. 1-20, EPA-HQ-OAR-2013-0024

<sup>4</sup> *Id.* at p. 3.

enhanced evaporative emission controls for high performance sterndrive/inboard engines; not-to-exceed limits; revised jet boat engine standards; and new carbon monoxide emission standards.<sup>5</sup>

## **II. CLEAN AIR ACT NONROAD ENGINE AND VEHICLE AUTHORIZATIONS**

### ***A. Criteria for New Authorization Determinations***

Section 209(e)(1) of the Act permanently preempts any state, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.<sup>6</sup> For all other nonroad engines (including “non-new” engines), states are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2) of the Act requires EPA, after notice and opportunity for public hearing, to authorize California to adopt and enforce such regulations unless EPA makes one of three specifically enumerated findings. In addition, other states with attainment plans may adopt and enforce such regulations if the standards, implementation, enforcement, are identical to California’s. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for nonroad engine or vehicle emission standards.<sup>7</sup> EPA revised these regulations in 1997.<sup>8</sup> As stated in the preamble to the 1994 rule, EPA has historically interpreted

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<sup>5</sup> *Id.*

<sup>6</sup> States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

<sup>7</sup> 59 FR 36969 (July 20, 1994).

<sup>8</sup> See 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

- (a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.
- (b) The authorization will not be granted if the Administrator finds that any of the following are true:

the section 209(e)(2)(iii) “consistency” inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).<sup>9</sup>

In order to be consistent with section 209(a), California’s nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California’s nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same “consistency” criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California “standards and accompanying enforcement procedures are not consistent with section 202(a)” of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

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(1) California’s determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

<sup>9</sup> See 59 FR 36969 (July 20, 1994).

If California amends regulations that were previously granted an authorization, EPA can confirm that the amended regulations are within the scope of the previously granted authorization. Such within-the-scope amendments are permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any “new issues” affecting EPA's prior authorizations.

### **III. EPA’s REQUEST FOR COMMENTS**

EPA invites public comment on CARB's entire request, including but not limited to the following issues.

#### ***A. 2008 Within-the-Scope or New Authorization***

First, we request comment on whether CARB's 2008 Amendments, summarized in CARB’s November 2012 letter, each individually assessed, should be considered under the within-the-scope analysis or whether they should be considered under the full authorization criteria. Specifically, we request comment on whether California’s 2008 Amendments 1) undermine California’s previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California’s requirements with section 209 of the Act, and (3) raise any other “new issue” affecting EPA’s previous waiver or authorization determinations.

In determining whether amendments can be viewed as within-the-scope of previous waivers, EPA does not evaluate how “significant” the changes to the regulations are, or whether



cost or emission benefit projections have changed, but rather EPA evaluates whether CARB has either made minor technical amendments to previously waived regulations or whether the amendments can reasonably be viewed as modifying the regulations in order to provide manufacturers with additional compliance flexibilities or otherwise reduce the overall stringency of the requirements.

Should any party believe that the 2008 Amendments for which California requested within-the-scope authorization do not merit consideration as within-the-scope of the previous Marine SI authorization, EPA also requests comment on whether those amendments meet the criteria for full authorization. Specifically, we request comment on: (a) whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

EPA similarly requests comment on whether the amendments for which CARB requested full authorization meet the criteria set forth above for making a new authorization determination.

#### **IV. PROCEDURES FOR PUBLIC PARTICIPATION**

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until October 18, 2013. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2013-0024.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as “Confidential Business Information” (“CBI”). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 9, 2013

Christopher Grundler, Director  
Office of Transportation and Air Quality

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